Paper No. 7

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OFFICE OF PETITIONS

In re Application of
Loskatoff et al.
Application No.10/044,796
Filed: January 11, 2002
Attorney Docket No. 13511.1USU1

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed August 22, 2002, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on January 11, 2002, without an executed oath or declaration. Accordingly, on February 22, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of April 22, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a four (4) month extension of time was also submitted.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1) and (2).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers. Rule 47 applicant indicates, Naida M. Luskutoff refused to sign the declaration in a telephone conversation. However, rule 47 applicant did not indicate a copy of the

application papers (specification, including claims, drawings, and oath or declaration) was presented to the non-signing inventor. All that is indicated is that the declaration was presented. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d).

As to item (2), although rule 47 applicant submitted a declaration with the petition, the declaration does not comply with 37 CFR 1.63. Specifically, Jennifer Rohr made changes to the declaration without initialing and dating the changes.

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor and she refused to sign. A declaration that corrects the defect outlined above must also be submitted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
                  Box DAC
                  Washington, D.C. 20231

By FAX: (703) 308-6916
                  Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
                  2201 S. Clark Place
                  Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

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 for Patent Examination Policy